

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0262P

Income Tax

Calendar Year 2001

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of a “no activity” income tax return for the calendar year 2001.

The taxpayer is a company located in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the late penalty should be waived as the error was the result of an assumption. The attorney in question filed with the Secretary of State papers for the initiation of the company. The attorney assumed the Secretary of State's papers would suffice as there was no transfer of assets to the taxpayer until the following year. This situation resulted in the income tax return being filed late by the taxpayer's accountant.

The Department points out that the State of Indiana's regulations require the filing of an income tax return for a tax year where there is no tax liability.

45 IAC 15-11-2(b) states, “Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness,

thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was ignorant of tax duties. Ignorance is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.